

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**CRANSTON, RITT**

**RHODE ISLAND TRAFFIC TRIBUNAL**

**STATE OF RHODE ISLAND**

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v.

**C.A. No. M17-0017  
17412501318**

**FRANCIS SPICOLA**

**DECISION**

**PER CURIAM:** Before this Panel on August 30, 2017—Magistrate Abbatte (Chair), Chief Magistrate Guglietta, and Magistrate DiSandro sitting—is Francis Spicola’s (Appellant) appeal from a decision of Judge Thomas M. Dickinson of the Woonsocket Municipal Court (Trial Judge), sustaining the charged violation of G.L. 1956 § 31-17-5, “Entering from private road or driveway.” The Appellant appeared before this Panel *pro se*. Jurisdiction is pursuant to § 31-41.1-8.

**I**

**Facts and Travel**

On March 30, 2017, Patrol Officer David Bibeault was dispatched to 30 Cumberland Street in the City of Woonsocket for a motor vehicle collision. (Tr. at 2.) Following an investigation of the accident scene, Officer Bibeault issued Appellant a citation for the abovementioned violation. *See* Summons No. 17412501318.

The matter proceeded to trial on June 7, 2017. At trial, Officer Bibeault testified as to his observations of the accident scene. He indicated that Appellant’s vehicle was struck on the driver’s side when crossing Clinton Street, a multilane road, from a private driveway. *Id.* at 2. The driver of the second vehicle, LaMar Hicks (Mr. Hicks), also testified at trial. *Id.* at 5. Mr.

Hicks testified that Appellant “darted out” onto the roadway, and despite braking hard, he struck Appellant’s vehicle in a “T-bone” fashion. *Id.* at 5-8. He indicated that Appellant appeared to be crossing all the lanes on the road to another parking lot across from the one he was leaving. *Id.* at 7.

The Appellant was the last witness to testify at trial. *Id.* at 10. The Appellant maintained that he was clear to pull out of the parking lot, onto Clinton Street, when he entered the roadway. *Id.* He indicated that Mr. Hicks’ vehicle was traveling at a high rate of speed after turning onto Clinton Street from Cumberland Street. *Id.* The Appellant testified that he was unable to see him when he pulled onto the roadway. *Id.* Both parties provided photographs and diagrams of the accident scene at trial.

After hearing testimony, the Trial Judge stated findings of fact on the record. *Id.* at 13. Specifically, the Trial Judge concluded that Appellant had entered the roadway from a private road without adequate time to cross, despite § 32-17-5 requiring that he yield to oncoming traffic:

“I will say, I think it’s a close case, and the photograph that Mr. Spicola provided does suggest the possibility that his vehicle was almost all the way across the intersection . . . almost all the way across the road by the time the collision occurred. However, the way the statute is written, you’re not supposed to cross the highway from a private road unless you can make it all the way across, and you’re supposed to yield to any vehicles approaching. So I find, based on the evidence I’ve heard, the exhibits that I’ve seen and the language in the statute, I do find that the City has met its burden of proof, and I therefore find Mr. Spicola guilty on the citation and the fine is \$86 and \$35 in court costs.” *Id.* (ellipses in original).

Thereafter, Appellant timely filed this appeal. Forthwith is this Panel’s decision.

## II

### Standard of Review

Pursuant to § 31-41.1-8, the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. Section 31-41.1-8(f) provides in pertinent part:

“The appeals panel shall not substitute its judgment for that of the judge or magistrate as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudicial because the judge’s findings, inferences, conclusions or decisions are:

- “(1) In violation of constitutional or statutory provisions;
- “(2) In excess of the statutory authority of the judge or magistrate;
- “(3) Made upon unlawful procedure;
- “(4) Affected by other error of law;
- “(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- “(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”

In reviewing a hearing judge or magistrate’s decision pursuant to § 31-41.1-8, this Panel “lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact.” *Link v. State*, 633 A.2d 1345, 1348 (R.I. 1993) (citing *Liberty Mut. Ins. Co. v. Janes*, 586 A.2d 536, 537 (R.I. 1991)). “The review of the Appeals Panel is confined to a reading of the record to determine whether the judge’s [or magistrate’s] decision is supported by legally competent evidence or is affected by an error of law.” *Id.* (citing *Envtl. Sci. Corp. v. Durfee*, 621 A.2d 200, 208 (R.I. 1993)). “In circumstances in which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record

or is affected by error of law, it may remand, reverse, or modify the decision.” *Id.* Otherwise, it must affirm the hearing judge’s (or magistrate’s) conclusions on appeal. *See Janes*, 586 A.2d at 537.

### III

#### Analysis

On appeal, Appellant asserts that the Trial Judge’s decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Specifically, Appellant maintains that he did not violate § 31-17-5 when he entered the roadway because at the time there were no other vehicles approaching. He contends that Mr. Hicks’ version of events is inaccurate, and that Mr. Hicks admitted to driving five miles-per-hour in excess of the posted speed limit. He argues further that Mr. Hicks’ view was obstructed by duct tape on the front driver’s side window.

Section 31-17-5 provides in pertinent part: “The driver of a vehicle about to enter or cross a highway from a private road or driveway shall yield the right-of-way to all vehicles approaching on the highway and to all pedestrians attempting to cross the private road driveway or highway.” Mr. Hicks’ version of events, if believed, would support the violation. *See* § 31-17-5.

It is well-established that this Panel “lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge concerning the weight of the evidence on questions of fact.” *Link*, 633 A.2d at 1348 (citing *Janes*, 586 A.2d at 537). An appeals panel cannot review witness credibility as a trial judge may, since a trial judge “has had an opportunity to appraise witness demeanor and to take into account other realities that cannot be grasped from a reading of a cold record.”” *A. Salvati Masonry Inc. v. Andreozzi*, 151 A.3d 745,

749 (R.I. 2017) (quoting *State v. Van Dongen*, 132 A.3d 1070, 1076 (R.I. 2016)). As this Panel did not observe live testimony, this Panel can neither assess the demeanor of a testifying witness, nor can it disturb a trial judge's findings of credibility. *A. Salvati Masonry Inc.*, 151 A.3d at 749 (quoting *Van Dongen*, 132 A.3d at 1076); *Link*, 633 A.2d at 1348 (citing *Janes*, 586 A.2d at 537). Accordingly, this Panel will not question the Trial Judge's assessment of the witnesses' veracity during trial.

Based on a review of the record, this Panel finds that the Trial Judge's decision is supported by legally competent evidence. *Link*, 633 A.2d at 1348. The record reveals two competing versions of events. Mr. Hicks' version was clearly credited by the Trial Judge, as it was incorporated into his findings of fact. As this Panel cannot substitute its judgment for that of the Trial Judge "concerning the weight of the evidence on questions of fact," or any reasonable inferences drawn by the Trial Judge sitting as the factfinder, this Panel will not disturb the Trial Judge's decision. *Id.* In consideration of the reasoning stated above, this Panel concludes that the Trial Judge's decision was not "[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record." *See* § 31-41.1-8(f) (5).

## IV

### Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the Trial Judge's decision was not "[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record." *See* § 31-41.1-8(f) 5). The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

ENTERED:

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Magistrate Domenic A. DiSandro, III

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Magistrate Joseph A. Abbate

DATE: \_\_\_\_\_

Note: Chief Magistrate William R. Guglietta participated in this Decision but was no longer a member of this Court at the time this Decision was issued.